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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF MARTIE
KUTSCHER IN SUPPORT OF
FACEBOOK, INC.'S ADMINISTRATIVE
MOTION TO STRIKE**

1 I, Martie Kutscher, hereby declare as follows:

2 1. I am an associate at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record
3 for Facebook, Inc. (“Facebook”) in the above-captioned matter. I am a member in good standing of
4 the State Bars of California, New Jersey, and New York. I submit this declaration in support of
5 Facebook’s Administrative Motion to Strike Plaintiffs’ August 9, 2021 Response to the Declaration
6 of Alexander H. Southwell (Dkt. 727) (“Motion to Strike”). I make this declaration on my own
7 knowledge, and I would testify to the matters stated herein under oath if called upon to do so.

8 2. The Parties have met and conferred extensively regarding their positions on
9 Facebook’s claim of privilege with respect to Facebook’s App Developer Investigation (“ADI”), over
10 more than one year. The Parties also mediated this dispute for four months, including their
11 disagreement regarding the scope of any further briefing the Parties would be permitted to submit to
12 the Court.

13 3. Based on these extensive discussions, Facebook’s understanding at the time it filed its
14 Motion to Strike was that Plaintiffs would not agree that their August 9, 2021 Response to the
15 Declaration of Alexander H. Southwell should be stricken and that judicial intervention would be
16 needed to obtain that relief. Plaintiffs’ Response to Facebook’s Motion to Strike confirms that
17 Facebook’s understanding was correct. *See* Dkt. 729 (“Facebook’s Administrative Motion to
18 Strike . . . should be denied. Plaintiffs’ August 9 submission is proper.”).

19 4. Facebook also understood that Plaintiffs opposed Facebook making further
20 submissions regarding ADI, given that Plaintiffs have taken this position in mediation and in multiple
21 Court filings. *See, e.g.,* Dkt. 631-3 at 4; Dkt. 699 at 5 (“Plaintiffs believe no further briefing or
22 affidavit is needed . . .”). Again, Plaintiffs confirmed this position in their response to Facebook’s
23 Motion to Strike. *See* Dkt. 729.

24 5. Facebook has understood based on the Parties’ practices in this case that motions to
25 strike do not request non-controversial administrative relief and that there is no realistic prospect that
26 the opposing party would consent to such motions. Indeed, on July 13, 2021, Plaintiffs filed a request
27 that the Court strike portions of a declaration Facebook filed in support of a sealing motion. Dkt.
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1 702. Plaintiffs did not meet and confer with Facebook prior to making this request. Nor did
2 Plaintiffs file a declaration explaining why a stipulation regarding the request could not be obtained.

3 6. I declare under penalty of perjury under the laws of the United States of America that
4 the foregoing is true and correct.

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6 Executed on August 19, 2021 in Palo Alto, California.

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8 /s/ Martie Kutscher

9 Martie Kutscher
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